

### **REMARKS**

This Amendment responds to the Office Action mailed on June 9, 2005.

The Examiner rejected claims 1-5, 10, and 13-15 under 35 U.S.C. § 102(b) as being anticipated by Birdwell et al., U.S. Patent No. 6,757,736 (hereinafter Birdwell). Birdwell discloses a server-based data distribution service by which the server first determines whether data updates should be initially broadcast to clients or delivered by point-to-point communication. Birdwell discloses two possibilities by which the first delivery attempt may not be detected by the server as reaching a client. First, a client may be powered "off", in which case neither point-to-point transmission nor a broadcast will result in the successful delivery of the update. Second, and only in the instance of an initial broadcast, a client may be powered "on" but not connected to the server, such that the broadcast successfully delivered the update, but the client was unable to confirm delivery with the server. In each of these instances, the server's response is to do *nothing* until a device initially powered "off" logs onto the server and requests data updates, at which point the server makes another determination, based on a list of which clients have not yet confirmed receipt of the update, of whether to rebroadcast the data or send the data by point to point communication.

Birdwell does not contemplate an unsuccessful broadcast attempt to a client powered "on" nor does Birdwell contemplate estimating a time to complete transferring updates to all clients because Birdwell, by assuming that any initial unsuccessful transfer must be the result of either a client powered "off" or not connected to the server, has no way of knowing or estimating when either of those situations will be remedied, i.e. *when a client will log onto the server or be powered "on."* Therefore, the disclosure by Birdwell of basing the decision on whether to broadcast or deliver by point-to-point-communication on "transmission characteristics" such as "transmission speed" or "cost of transmission" should not be read as comparing estimated times to achieve successful transfer to *all* clients to be updated by broadcast and point-to-point transmission, respectively. Instead, "transmission speed" at most, must refer to the rate of transmission for each method of transfer *per attempt*, and "cost" must refer to the monetary cost of each broadcast *attempt*. Birdwell does not disclose that any individual decision to either broadcast or deliver by point-to-point transmission be based upon a *forecast* of either the time, or

number of attempts, it will take to update all clients, but rather the time and cost of completing *only the particular attempt for which the decision is being made*. See MPEP § 2131-2131.01 (stating that an anticipation rejection is supported only where the reference expressly discloses the limitation or inherently, i.e. necessarily, discloses the limitation, neither of which is provided by the vague language of the Birdwell reference).

Independent claim 1 has been amended to recite the limitation “broadcasting unreceived data to said plurality of recipients at a time when each said plurality of recipients is capable of receiving said data by point-to-point communication.” As stated earlier, if this condition is present in the system of Birdwell, that reference does not disclose any rebroadcast or point-to-point transmission because each client will presumably have received the update. Furthermore, independent claim 1 also includes the limitation of “repeating step (a) until a time for the completion of transferring said unreceived data by point-to-point communication with said recipients obtains a predetermined relationship to a time for the completion of said broadcasting.” As argued earlier, this limitation cannot be disclosed by Birdwell, because Birdwell only contemplates further attempts at an update after a client, *at an unknown time*, powers on and requests the update. Hence Birdwell cannot disclose any means by which this relationship may be measured so as to then “complet[e] said transferring of said unreceived data by point-to-point communication.”

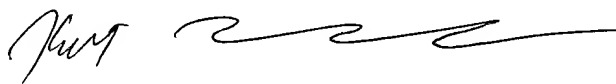
Therefore, independent claim 1, along with dependent claims 2-5 patentably distinguish over Birdwell and should be allowable. The applicant also notes with respect to dependent claim 4, that Birdwell cannot possibly estimate “remaining unreceived data following an additional broadcast of said data” because the server of Birdwell only knows which clients have not confirmed receipt of the broadcast and does not know, out of those clients, which have received the data but are not connected to the server or which are powered off and have not received the data. Similarly, with respect to claim 3, Birdwell cannot poll any potential recipient to determine whether the data has been unreceived, but merely discloses updating a confirmation list where the lack of confirmation could indicate either unreceived data, or received data that cannot be confirmed until a network connection is established. Therefore, the Examiner’s rejection of claims 3-4 are unsupported for these additional reasons, as well.

Independent claim 10 includes the limitations of "polling at least one said recipient to identify unreceived data" and "estimating a time for completion of transferring said unreceived data to said plurality of recipients, neither of which is disclosed by Birdwell for the reasons explained above. Therefore, claim 1, as well as its dependent claims 13-15 are patentably distinguished over Birdwell and should be allowed.

The Examiner rejected claims 6-8, 11, 12, 16-20, and 20-24 under 35 U.S.C. § 103(a) as being obvious in view of the combination of Birdwell with Iwamura et al., U.S. Patent No. 6,396,814. Iwamura discloses a method of distributing data to a large number of recipients by first dividing the recipients into groups, selecting one or more representative recipients from each group, and distributing data to each of the representative recipients which then re-distribute the data to other recipients in their respective groups by direct, or point-to-point communication. See *Iwamura* at col 15, lines 54-56. First, the Examiner's obviousness rejection of each of these claims depends on the Examiner's misinterpretation of Birdwell, previously discussed.

Furthermore, Hutchison and Iwamura may not be combined in the manner suggested by the Examiner, because Iwamura merely discloses the use of representative recipients to pass along the information within the group they represent, and not as a method of determining whether any of the recipients have successfully received data, so as to repeat an attempt by the original transmitter. In fact, the assumption of Iwamura is that the original transmitter never sent the data to any other clients other than the representative clients. Therefore, for each of these reasons, the Examiner's rejection of claims 6-8, 11, 12, 16-20, and 20-24 are without basis and should be withdrawn. In view of the foregoing amendments and remarks, the Applicant respectfully requests reconsideration and allowance of claims 1-24.

Respectfully submitted,



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